IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

TEREX CORPORATION — PLAINTIFF

vs. — Civil Action No. 2:97cv243-D-B

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE and AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW and its Local 1004 — DEFENDANTS

MEMORANDUM OPINION

Presently before the court are the cross-motions of the parties for the entry of summary judgment in the cause at bar. After careful consideration, the undersigned is of the opinion that the decision of the arbitrator in this matter should stand and should be enforced. Therefore, the court shall deny the plaintiff's motion for summary judgment and grant the defendants' motion for summary judgment.

. Background

On February 7, 1997, the plaintiff Terex Corporation ("Terex") terminated the employment of Michael Stump for violating an employee work rule which prohibited "[h]arassing another employee because of that employee's . . . sex . . . ." Arbitration Opinion and Award, p. 7. Terex determined that Stump sexually harassed another Terex employee, Jean Hodge. Pursuant to a collective bargaining agreement between Terex and the defendant International Union of United Automobile, Aerospace, Agricultural Workers of America ("UAW"), Stump pursued a grievance against the company through the established grievance procedure regarding his termination. Ultimately, the matter was presented to an arbiter, who rendered his decision in favor of Stump. The arbiter directed that Terex reinstate Stump's employment and be given an award of back pay and benefits.

Aggrieved with the decision of the arbiter, Terex now comes to this court seeking to have the undersigned overturn that decision. With regard to the incident itself, the arbiter made the

following factual findings:

> It appears of record that Hodge and the grievant were once on rather friendly terms and have routinely exchanged e-mail messages of a personal nature. (Tr. 58, 59). But, what Hodge complains of herein is that, on January 23, 1997, "he . . . (Stump) lunged towards me and grabbed me by my arms and attempted to kiss my neck." (Co. Ex. 2). Hodge also complains that soon after that encounter, Stump sent to her, via computer, a "wiz-mail" reading as follows:
>
> *i wish you'd let me!!!! pleeeeeasssssssssee let me ! ! ! ! ! ! !*
>
> to which she replied:
>
> *I DO NOT EVEN THINK SO ! ! ! ! ! !*
>
> followed by another message from Stump:
>
> *i 'will' get you! and i'd appreciate your not calling me those ugly names too . . . Got it???*
>
> *you know what you called me when i was talking about your walk . . . are you ready and or able to go out and play yet ???*
>
> . . .
>
> According to Hodge, following the wiz-mail she "saw him on the packing floor and told him that I did not want him to put his hands on me again . . . he has not bothered me again." (Co. Ex. 2). Nothing further of record transpired between Hodge and the grievant. There has been no further offensive conduct. . . . it appears that following the grievant's attempt to kiss her, Hodge continued to work the rest of her shift that day, and there is nothing of record showing that she ever lost any time due to the events at issue.

Arbitration Opinion and Award, pp. 12-13 (text as in original). The undersigned declines to delve into a further, detailed discussion of the facts of this matter, and shall instead discuss the pertinent facts as they become necessary for the resolution of this matter.

. Discussion

. Summary Judgment Standard

Summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The burden rests upon the party seeking summary judgment to show to the district court that an absence of evidence exists in the non-moving party's case. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 106 S. Ct. 2548, 2553, 91 L. Ed. 2d 265 (1986); see Jackson v. Widnall, 99 F.3d 710, 713 (5th Cir. 1996); Hirras v. Nat'l R.R. Passenger Corp., 95 F.3d 396, 399

(5th Cir. 1996). Once such a showing is presented by the moving party, the burden shifts to the non-moving party to demonstrate, by specific facts, that a genuine issue of material fact exists. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249, 106 S. Ct. 2505, 2511, 91 L. Ed. 2d 202 (1986); Texas Manufactured Housing Ass'n, Inc. v. City of Nederland, 101 F.3d 1095, 1099 (5th Cir. 1996); Brothers v. Klevenhagen, 28 F.3d 452, 455 (5th Cir. 1994). Substantive law will determine what is considered material. Anderson, 477 U.S. at 248; see Nichols v. Loral Vought Sys. Corp., 81 F.3d 38, 40 (5th Cir. 1996). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." Anderson, 477 U.S. at 248; see City of Nederland, 101 F.3d at 1099; Gibson v. Rich, 44 F.3d 274, 277 (5th Cir. 1995). Further, "[w]here the record, taken as a whole, could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue of fact for trial." Anderson, 477 U.S. at 248; see City of Nederland, 101 F.3d at 1099. Finally, all facts are considered in favor of the non-moving party, including all reasonable inferences therefrom. See Anderson, 477 U.S. at 254; Banc One Capital Partners Corp. v. Kneipper, 67 F.3d 1187, 1198 (5th Cir. 1995); Taylor v. Gregg, 36 F.3d 453, 455 (5th Cir. 1994); Matagorda County v. Russell Law, 19 F.3d 215, 217 (5th Cir. 1994). However, this is so only when there is "an actual controversy, that is, when both parties have submitted evidence of contradictory facts." Little v. Liquid Air Corp., 37 F.3d 1069, 1075 (5th Cir. 1994); Guillory v. Domtar Industries Inc., 95 F.3d 1320, 1326 (5th Cir. 1996); Richter v. Merchants Fast Motor Lines, Inc., 83 F.3d 96, 97 (5th Cir. 1996). In the absence of proof, the court does not "assume that the nonmoving party could or would prove the necessary facts." Little, 37 F.3d at 1075 (emphasis omitted); see Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871, 888, 111 L. Ed. 695, 110 S. Ct. 3177 (1990).

. Review of the Arbiter's decision

There is a strong preference in our system of justice for the arbitration of disputes, and specifically of labor disputes. Delta Queen Steamboat Co. v. District 2 Marine Engineers and Beneficial Ass'n,, 889 F. 2d 599, 602 (5th Cir. 1989). This preference for arbitration results in a high

deference for arbitrated decisions.

> [W]e recognize that federal courts defer to the arbitrator's resolution of the dispute "whenever possible." Anderman/Smith Co. v. Tenn. Gas Pipeline Co., 918 F.2d 1215, 1218 (5th Cir.1990), *cert. denied*, 501 U.S. 1206, 111 S.Ct. 2799, 115 L.Ed.2d 972 (1991). Congress's decided preference for arbitration, as reflected in federal statutes regulating labor-management relations, establishes a standard of review that is highly deferential to the arbitrator's bargained-for judgment . . . . Notwithstanding this admonition, however, arbitration awards are not inviolate.

Gulf Coast Indus. Workers Union v. Exxon Co., 991 F.2d 244, 248 (5th Cir. 1993). While the federal courts have the authority to review arbitration awards, the district court's "review of an arbitration award is extraordinarily narrow." Antwine v. Prudential Bache Securities, Inc., 899 F.2d 410, 413 (5th Cir.1990); Delta Queen, 889 F.2d at 602. In a proceeding to confirm or vacate an arbitration award, the Federal Arbitration Act ("FAA") circumscribes the review of this court, providing that an award shall not be vacated unless:

(1) the award was procured by corruption, fraud, or undue means;

(2) there is evidence of partiality or corruption among the arbitrators;

(3) the arbitrators were guilty of misconduct which prejudiced the rights of one of the parties; or

(4) the arbitrators exceeded their powers.

9 U.S.C. § 10(a)(1)- (4); Gateway Technologies, Inc. v. MCI Telecommunications Corp., 64 F.3d 993, 996 (5th Cir.1995); Manville Forest Prods., Corp. v. United Paperworkers Intern., 831 F.2d 72, 74 (5th Cir.1987). Additionally, however, the undersigned may vacate an arbiter's award where the award violates public policy. United Paperworkers Intern. Union v. Misco, Inc., 484 U.S. 29, 42, 108 S.Ct. 364, 373, 98 L.Ed.2d 286 (1987); W.R. Grace & Co. v. Local Union 759, Int'l Union of United Rubber, Cork, Linoleum & Plastic Workers of Am., 461 U.S. 757, 766, 103 S.Ct. 2177, 2183, 76 L.Ed.2d 298 (1983); Manville Forest Prods., 831 F.2d at 74; Local 1351, Intern. Longshoremen's Ass'n v. Sea-Land Service Incorporation, 991 F. Supp. 825, 829 (N.D. Tex. 1998). Nevertheless, when reviewing an award of the arbiter, this court must accept as true the factual findings of the arbitrator. United Steelworkers of America v. Enterprise Wheel and Car Corp., 363 U.S. 593, 596-99, 80 S.Ct. 1358, 1360-61, 4 L.Ed.2d 1424 (1960); Manville, 831 F. 2d at 75. Indeed, this court

must not disturb even "improvident, even silly, factfinding." United Food & Commercial Workers v. National Tea, 899 F.2d 386, 389 (5th Cir. 1990). As well, the court must in most instances accept the arbiter's interpretation of the arbitration contract and the applicable law. Manville, 831 F.2d at 75. In the case at bar, it appears that the plaintiff only contends that it is entitled to relief under two of the foregoing provisions - 1) the public policy exception and 2) the arbiter exceeded his powers, *i.e.*, the decision "does not 'dra[w] its essence' from the contract."

. Was the arbiter's decision in violation of a well-defined public policy?

Seeking to set aside an arbiter's decision based upon a violation of public policy is a colossal task at best. Those cases that have applied it have set aside awards "where employees violated public policies while performing duties integral to their employment and where reinstatement would have jeopardized public health or safety." Chrysler Motors Corp. v. Int'l Union, Allied Indus. Workers, 748 F. Supp. 1352, 1361 (E.D. Wis.1990) (citing Delta Air Lines, Inc. v. Air Line Pilots Ass'n, Int'l, 861 F.2d 665 (11th Cir.1988), *cert. denied*, 493 U.S. 871, 110 S.Ct. 201 (1989); Iowa Electric Light and Power Co. v. Local Union 204, 834 F.2d 1424 (8th Cir 1987)). The United States Supreme Court has explained that a court's refusal to enforce an award that is contrary to public policy is little more than "a specific application of the more general doctrine, rooted in the common law, that a court may refuse to enforce contracts that violate law or public policy." Misco, 484 U.S. at 42, 108 S.Ct. at 373.

> Although the public policy exception to our usual deference is not to be invoked lightly, a court may exercise its judicial power to abrogate a private agreement when, for example, it gives short shrift to the public's important yet unrepresented interests. *When such violations are alleged, we enjoy more latitude in reviewing the arbitrator's decision.* As the Supreme Court held in W.R. Grace, the question of public policy is wholly independent from the collective bargaining agreement and "is ultimately one for resolution by the courts." 461 U.S. at 766, 103 S.Ct. at 2183. *In such instances, reviewing courts resolve the issue by "taking the facts as found by the arbitrator, but reviewing his conclusions de novo."* Iowa Elec. Light & Power v. Local Union 204, 834 F.2d 1424, 1427 (8th Cir.1982); E.I. DuPont de Nemours v. Grasselli Emp. Ass'n, 790 F.2d 611, 617 (7th Cir.), *cert. denied*, 479 U.S. 853, 107 S.Ct. 186, 93 L.Ed.2d 120 (1986).

Gulf Coast Indus., 991 F.2d at 249 (emphasis added). It may be fairly argued by the plaintiff that this nation has a well established public policy against sexual harassment in the workplace. See, e.g., Newsday, Inc. v. Long Island Typographical Union, 915 F. 2d 849, 845 (2d Cir. 1990) ("[T]here is

an explicit, well-defined, and dominant public policy against sexual harassment in the work place."); Garziano v. E.I. Du Pont De Nemours & Co., 818 F. 2d 380, 387 (5th Cir. 1987) ("State and federal law both condemn sexual harassment as a matter of public policy."); 42 U.S.C. § 2000e-2(a)(1); 29 C.F.R. § 1604.11(a). Likewise, it may be argued that subsumed within this public policy is another public policy in favor of encouraging employers to take reasonable steps to prevent sexual harassment in the workplace. Nevertheless, the demonstration of such public policies does not alone justify the relief that the plaintiff seeks, for it must also demonstrate that the arbiter's refusal to find "just cause" for termination in this case *clearly violates* those policies. Gulf Coast Indus., 991 F.2d at 249.

In reviewing the facts established by the arbiter in this cause, the undersigned cannot say that the plaintiff has shown that the arbiter violated any relevant public policy consideration. The arbiter did not determine that sexual harassment did not constitute "cause" sufficient to support termination. Rather, he determined that Mr. Stump was not guilty of sexual harassment. Arbitration Opinion and Award, p. 13 ("While the grievant's lonesomely aberrant behavior was aggressive, and most certainly inappropriate, it does not rise to the level of sexual harassment."). In the interpretation of what constitutes "harassment" pursuant to the collective bargaining agreement, the arbiter chose to ascribe the same meaning of the term as it is understood pursuant to federal proscriptions against sexual harassment under Title VII of the Civil Rights Act of 1964. 42 U.S.C. § 2000e *et seq.*,. In applying *de novo* review to this question of contractual interpretation, the undersigned cannot say that the arbiter was in error in doing so. The collective bargaining agreement forbids sexual harassment by virtue of the following "Employee Standard of Conduct" which is adopted by reference in the agreement.

> Various actions or conduct on the part of an employee including, but not limited to the following, will be grounds for discipline up to and including termination of employment:
>
> . . .
>
> . Harassing another employee because of that employee's race, color, sex, religion, age, physical or mental disability, national origin, or veteran's status or any other reason.

Arbitration Opinion and Award, p. 6 (quoting Collective Bargaining Agreement); Exhibit "1" to

Plaintiff's Motion, Collective Bargaining Agreement, p. 20 ("The current Employee standards of conduct are attached hereto . . . "). The Terex employee handbook extrapolates upon the meaning of "sexual harassment" under Terex policy:

> [S]exual harassment . . . is defined as unwelcome sexual advances, explicit or implied requests for sexual favors, and other verbal and physical conduct of a sexual nature *when* (1) submission to such conduct is explicitly or implicitly a term or condition of an individual's employment (2) submission to or rejection of such conduct by an individual is used as the basis for an employment decision or (3) *such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating or hostile work place.*

Exhibit to Plaintiff's Motion, Terex Employee Handbook, unnumbered p. 5 (emphasis added). No further explanation of "sexual harassment" under Terex policies appears to be available. When looking to this definition of "harassment" under Terex policy, it does indeed appear to be little different from the term as employed in Title VII law. The arbiter was not in error in employing the federal standards for his determination.

As the arbiter correctly noted, there are generally two types of sexual harassment acknowledged under federal law in the employment context - *quid pro quo* harassment and hostile work environment claims. Terex's official policy regarding sexual harassment appears to cover both types under its definition. This matter at bar does not impinge upon the protections against *quid pro quo* harassment, so the application of the first two provisions of Terex's definition are inapposite here. The remaining provision against the creation of a hostile work environment, however, squarely applies to the facts at bar.

Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, prohibits discrimination "against any individual with respect to [her] compensation, terms, conditions, or privileges of employment, because of such individual's . . . sex." 42 U.S.C. § 2000e-2(a)(1). "Hostile work environment" sexual harassment occurs when an employer's conduct "has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive environment." Meritor Sav. Bank v. Vinson, 477 U.S. 57, 65, 106 S. Ct. 2399, 2404, 91 L.Ed.2d 49 (1986); Farpella-Crosby v. Horizon Health Care, 97 F.3d 803 (5th Cir.1996). The offensive action must create an environment hostile or abusive to the reasonable person. Farpella,

97 F.3d at 806; Weller v. Citation Oil & Gas Corp., 84 F.3d 191, 194 (5th Cir. 1996). Whether an environment meets this criteria depends upon the "totality of the circumstances." Harris v. Forklift Sys., Inc., 510 U.S. 17, 22, 114 S. Ct. 367, 371, 126 L.Ed.2d 295 (1993); DeAngelis v. El Paso Municipal Police Officers Ass'n, 51 F.3d 591, 594 (5th Cir.), *cert. denied*, --- U.S. ---, 116 S. Ct. 473, 133 L.Ed.2d 403 (1995).

> In determining whether a working environment is "hostile" or "abusive," all the circumstances must be considered, including the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance.

DeAngelis v. El Paso Mun. Police Officers Ass'n, 51 F.3d 591, 594 (5th Cir. 1995) (citing Harris, 510 U.S. at 22, 114 S.Ct. at 371). In light of the totality of the facts and circumstances in this case, the undersigned cannot say that the arbiter's decision that Mr. Stump was not liable for hostile work environment is in violation of well-defined public policy. It was well within the purview of the arbiter to determine that the factors which weighed in favor of a determination of harassment were outweighed by the other relevant factors, particularly in light of the limited nature of Stump's actions and their cessation upon Ms. Hodge's confrontation with him on the packing floor. Additionally, the arbiter only found that Stump "attempted" to kiss Ms. Hodge, and this court finds that fact very relevant.

"Conduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment - - an environment that a reasonable person would find hostile or abusive - - is beyond Title VII's purview." Harris, 510 U.S. at 21. "A hostile environment claim embodies a series of criteria that express *extremely insensitive* conduct against women, conduct *so egregious* as to alter the conditions of employment and destroy their equal opportunity in the workplace." DeAngelis, 51 F.3d at 593 (emphasis added). It is crucial to remember that this court will not permit an interpretation of Title VII that mak[es] actionable "conduct that sporadically wounds or offends but does not hinder a female employee's performance, would not serve the goal of equality." Instead, a lesser standard "would attempt to insulate women from everyday insults as if they remained models of Victorian reticence." Weller v. Citation Oil & Gas Corp., 84 F.3d 191, 194 (5th Cir.1996). Such a

result is not the goal of Title VII. While Mr. Stump's actions might be boorish, juvenile and in the words of the arbitrator "lonesomely aberrant," the undersigned does not believe that his conduct would have the purpose or effect of unreasonably interfering with a reasonable woman's work performance or creating an intimidating, hostile, or offensive environment. Indeed, there was no evidence before the arbiter that any further offensive conduct occurred after Ms. Hodge informed Stump that she would no longer tolerate such behavior.

The parties make much ado concerning the arbiter's classification of these incidents as "joined by temporal and contextual considerations such as to form one continuing personal encounter between Hodge and [Stump]." Arbitration Opinion and Award, p. 12. Whether these incidents are separate or constitute a "single occurrence" is, in this court's opinion, merely semantical and does not affect the ultimate determination at bar. Indeed, this court agrees that even single incidents may be sufficient to constitute harassment in light of all of the factors to be considered. Nevertheless, this does not mandate a finding that every attempted kiss requires a determination of harassment as defined under Title VII law and as adopted by reference in Terex's definition of harassment. Terex may modify its standard of harassment to cover a more varied range of conduct, which might encompass Stump's actions sufficiently to justify cause for termination or other discipline in the future. Exhibit "1" to Plaintiff's Motion, Collective Bargaining Agreement, p. 12 (affording Terex rights to "establish, modify and enforce reasonable work rules . . ."). Under its present terms, however, it is not so broad as to encompass the facts at bar, and this court cannot say that the arbitrator's interpretation violates a well-defined public policy consideration.

As an aside, the court notes that the arbiter's decision was that the facts in the present case did not justify termination from employment. The Fifth Circuit has acknowledged on numerous occasions that an employer may satisfy its duties under Title VII by taking remedial action without terminating the offending employee. See, *e.g.*, Waymire v. Harris County, 86 F.3d 424, 428 (5th Cir.1996) (employer conducted a prompt investigation and reprimanded harasser orally and in

writing); Carmon v. Lubrizol Corp., 17 F.3d 791, 794-95 (5th Cir.1994) (employer conducted an investigation and reprimanded and transferred harasser); Nash v. Electrospace Sys., Inc., 9 F.3d 401, 404 (5th Cir.1993) (harassed employee transferred to another supervisor and department with no loss in pay or benefits); Dornhecker v. Malibu Grand Prix Corp., 828 F.2d 307, 309-10 (5th Cir.1987) (supervisor assured employee that after business trip concluded employee would no longer have any contact with harasser). The Fifth Circuit has even specifically noted that employees guilty of sexual harassment need not necessarily be terminated. Waymire, 86 F.3d at 429 ("Title VII does not require that an employer use the most serious sanction available to punish an offender, particularly where, as here, this was the first documented offense by the individual employee."). All that is required to avoid liability in this regard is that the employer "promptly responds with remedial action reasonably calculated to end the harassment." Carmon v. Lubrizol Corp., 17 F.3d 791, 794-95 (5th Cir.1994); Watts v. Kroger, 955 F. Supp. 674, 682 (N.D. Miss. 1997). Terex had available to it multiple disciplinary options. Indeed, its own policy provides for multiple options. Arbitration Opinion and Award, p. 6 (quoting Collective Bargaining Agreement) (violation of work rules "will be grounds for discipline up to and including termination of employment.").

. Did the arbiter's award "draw its essence from the collective bargaining agreement?"

Terex also contends that the arbitration award does not draw its essence from the collective bargaining agreement:

> Arbitrator Bankson's ignoring of past practice and ignoring of the many admonishments of Terex management to its employees that it would not tolerate any incidents of sexual harassment means simply that the arbitrator did not draw his conclusions from the essence of the collective bargaining agreement and, thus, the Award should be voided on this additional basis.

Plaintiff's Brief, p. 27.

A court will not disturb an award if it "draws its essence from the collective bargaining agreement" and is not based on the arbitrator's "own brand of industrial justice." United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593, 597, 80 S.Ct. 1358, 1361, 4

L.Ed.2d 1424 (1960); Exxon Corp. v. Baton Rouge Oil, 77 F.3d. 850, 853 (5th Cir. 1996); Houston Lighting & Power Co. v. International Broth. of Elec. Workers, 71 F.3d 179, 182 (5th Cir. 1995). In reviewing the arbiter's award to determine whether the award "draws its essence from the collective bargaining agreement," this court must determine whether the arbitration award has "a basis that is at least rationally inferable, if not obviously drawn, from the letter or purpose of the collective bargaining agreement . . . . [T]he award must, in some logical way, be derived from the wording or purpose of the contract." Bruce Hardwood Floors v. UBC, Southern Council of Indus. Workers, 103 F. 3d 449, 451 (5th Cir. 1997) (quoting Executone Info. Sys., Inc. v. Davis, 26 F.3d 1314, 1325 (5th Cir.1994)). Under this aspect of review, this court may not question the arbitrator's determinations of fact, of law, or of interpretation of the contract. Misco, 484 U.S. at 36, 108 S.Ct. at 369-70; Exxon, 77 F.3d at 853. However, the court may scrutinize the award to ensure that the arbitrator complied with the jurisdictional prerequisites of the collective bargaining agreement. Exxon, 77 F.3d at 853; E.I. DuPont de Nemours and Co. v. Local 900 of Int'l Chemical Workers Union, 968 F.2d 456 (5th Cir.1992). The district court may vacate an arbitrator's award if the arbitrator exceeded its arbitral authority provided for in the agreement. Id.

Regardless of whether Terex properly implemented a policy of "zero tolerance" and adequately conveyed to its employees its adherence to such a policy, the arbitrator's decision was that "harassment" - as defined under the contract and in the employee handbook - did not occur. Arbitration Opinion and Award, p. 13 ("While the grievant's lonesomely aberrant behavior was aggressive, and most certainly inappropriate, it does not rise to the level of sexual harassment."). Therefore, no discipline, be it termination or otherwise, was justified by Terex pursuant to the terms of the collective bargaining agreement's prohibition against sexual harassment.

It is clear that the arbitrator in his award drew the essence of that award from the contract, and that in ordering the reinstatement of Mr. Stump the arbitrator was at least "arguably construing or applying the contract" in that he construed the definition of "harassment." Misco, 484 U.S. at 38, 108 S.Ct. at 371. His interpretation of the collective bargaining agreement was within his exclusive

province, and the parties contracted to vest him with that very authority.

> The parties agree that the arbitrator must interpret this Agreement and apply it to the particular case presented to him/her; but he/she shall, however, have no authority to add to, subtract from, or in any way ignore or modify the terms of this Agreement. The decision of the arbitrator shall be final and binding on the parties.

Exhibit "1" to Plaintiff's Motion, Collective Bargaining Agreement, p. 6. It is not for this court to agree or disagree with his interpretation. This ground garners the plaintiff no relief.

. Conclusion

After careful consideration of the motions before the court, the undersigned is of the opinion that the decision of the arbiter in this matter should remain undisturbed. Therefore, the motion of the plaintiff for the entry of summary judgment on its behalf shall be denied, and the motion of the defendants for the entry of summary judgment shall be granted. Finally, the court is of the opinion that an award of attorney's fees and costs is not appropriate in this matter. The arbiter's award shall be enforced.

A separate order in accordance with this opinion shall issue this day.

This the _____ day of April 2001.

_____
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

TEREX CORPORATION — PLAINTIFF

vs. — Civil Action No. 2:97cv243-D-B

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE and AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW and its Local 1004 — DEFENDANTS

ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Pursuant to a memorandum opinion issued this day, it is hereby ORDERED THAT:

) the plaintiff's motion for the entry of summary judgment on its behalf is hereby DENIED;

) the defendants' motion for the entry of summary judgment on their behalf is hereby GRANTED;

) this court declines to disturb the decision of the arbitrator in this matter; the plaintiff Terex is hereby ORDERED to comply with the decision of the arbitrator;

) the defendants' request for an award of attorney's fees and expenses is hereby DENIED; and

) this case is CLOSED.

SO ORDERED, this the _____ day of April 2001.

_____
United States District Judge